



Do Ban-The-Box Laws Change Your Adverse Action Requirements?

A step-by-step guide to meeting both ban-the-box and FCRA adverse action requirements—even when they overlap.

START HERE

Are you in a ban-the-box jurisdiction?

NELP NATIONAL EMPLOYMENT LAW PROJECT

Not sure? Check the guide to state and local ban-the-box laws at nelp.org/publications.

Buy or DIY?
Did you use a background check service (Buy) or do the research yourself (DIY)?

Does ban-the-box apply?
Are you an "employer" as defined by your state or local ban-the-box law?

Some ban-the-box laws apply only to employers with a certain number of employees. Some apply only to public or only to private employers. And some apply to all employers.

Check for differences in:

1. The waiting period between pre-adverse action and final adverse action notices
2. The information required in your written notice of the adverse action decision
3. The notifications you're required to send the candidate

Buy or DIY?
Did you use a background check service (Buy) or do the research yourself (DIY)?

FCRA

1 2 3 4 5 6 7

Ban-The-Box

If your ban-the-box law requires 7 days between pre-adverse action and final adverse action notices, you must wait 7 days even though the FCRA only requires 5. If your ban-the-box law requires a 2-day waiting period, you still must wait the full 5 days the FCRA requires.

Do the laws conflict?
Do the adverse action requirements under your ban-the-box law differ from FCRA requirements?

Remember The EEOC

You don't have to follow FCRA or ban-the-box rules. Follow EEOC guidelines for candidates with criminal records.

Follow The FCRA

Focus on the three-step adverse action process outlined by the FCRA.

Do What Benefits The Candidate Most

Comply with both laws in a way that's most beneficial to the candidate.

Follow Ban-The-Box Adverse Action

Focus compliance efforts on ban-the-box, including any specific adverse action steps required.

Download THE ULTIMATE GUIDE TO BACKGROUND CHECK COMPLIANCE